3.1 What is the purpose of this chapter? This chapter provides guidance necessary to ensure Fish and Wildlife Service compliance with the Federal Water Pollution Control Act, also known as the Clean Water Act (CWA).

3.2 What is the Service's policy? We will protect and restore the chemical, physical, and biological quality of the Nation's water resources; promote the conservation of fish and wildlife resources; and protect the public health, welfare, environment and productive capacity of its population. In order to accomplish these goals, we must comply with all applicable Federal, State, interstate, regional, and local regulations.

3.3 Who is responsible for the program?

A. Chief, Division of Engineering is responsible for overall leadership and coordination of the CWA compliance program. Responsibilities include, but are not limited to:

(1) Tracking progress on all compliance schedules that regulatory agencies impose on our facilities along with existing and projected funding requirements necessary to meet the schedules.

(2) Providing guidance and assistance to the Regional Engineer/Compliance Coordinator in complying with this chapter.

(3) Anticipating and evaluating the effect of new/proposed regulations on our facilities and the requirements necessary to keep them in compliance.

B. Regional Engineers are responsible for the coordination and effectiveness of the CWA compliance program within their Region. Regional Engineers must:

(1) Prepare designs and contracting packages as needed to comply with the CWA.

(2) Assist in preparing Regional budget requests for projects required to comply with the CWA.

(3) Assist facility managers in the preparation of any required discharge permit applications and/or Spill Prevention Control and Countermeasure (SPCC) Plans for their facilities.

(4) Notify the Division of Engineering when terms of a discharge permit are in violation/noncompliance.

(5) Assist facility managers in bringing facilities back into compliance when the regulatory agency has found them to be in violation/noncompliance.

(6) Assist facility managers in seeking the funding requirements necessary to keep existing systems in compliance.

C. Facility Managers/Project Leaders must:

(1) Maintain contact and coordinate with the local regulating agency.

(2) Ensure that they obtain all required permits.

(3) Ensure the facility is operated and monitored according to all permit requirements and that they submit all required reports on time.

(4) Provide the required notification when the condition of the permit is in violation/noncompliance.

(5) Ensure that records are retained as long as required by Federal and State regulations, or a minimum of 3 years.

(6) Ensure that system operators, if any, have been properly trained and, if required, licensed or certified by the State.

3.4 What is the scope of this chapter? This chapter applies to all Service-owned or operated facilities, including quarters, vessels, and vehicles. In order to further protect our trust resources and minimize our responsibility or liability for discharges to waters of the United States not caused by the Service, you must include the general provisions of this chapter in the terms of any special use permit, lease, or concession agreement that could involve a release or discharge to waters of the United States. (Example: Concessionaires and special use permit holders who operate regulated petroleum storage tanks must provide the Service with a copy of their certified SPCC plan.)

3.5 What are the authorities for this chapter?

A. Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 *et seq.* (also known as the Clean Water Act).

B. 40 CFR 110, Environmental Protection Agency (EPA), Discharge of Oil.

C. 40 CFR 112, EPA, Oil Pollution Prevention.

D. 40 CFR 116, EPA, Designation of Hazardous Substances.

E. 40 CFR 117, EPA, Determination of Reportable Quantities for Hazardous Substances.

F. 40 CFR 122, EPA, EPA Administered Permit Programs: The National Pollutant Discharge Elimination System.

G. 40 CFR 125, EPA, Criteria and Standards for the National Pollutant Discharge Elimination System.

H. 40 CFR 129, EPA, Toxic Pollutant Effluent Standards.

I. 40 CFR 136, EPA, Guidelines Establishing Test Procedures for the Analysis of Pollutants.

J. 40 CFR 140, EPA, Marine Sanitation Device Standard.

3.6 What are the definitions for some terms in this chapter?

A. Best Available Technology (BAT). The very best control and treatment measures that have been or are capable of being achieved.

B. Discharge of a Pollutant.

(1) Any addition of any pollutant or combination of pollutants to waters of the United States from any point source.

(2) Any addition of any pollutant or combination of pollutants to the waters of the contiguous zone or the ocean from any point source other than a vessel or other floating craft that is being used as a means of transportation.

C. Discharge. When used in relation to Section 311 of the CWA, includes, but is not limited to, any spilling, leaking, pumping, pouring, emitting, emptying, or dumping, but excludes:

(1) Discharges in compliance with a permit under Section 402 of the CWA.

(2) Discharges resulting from circumstances identified and reviewed and made a part of the public record with respect to a permit issued or modified under Section 402 of the CWA, and subject to a condition in such permit.

(3) Continuous or anticipated intermittent discharges from a point source, identified in a permit or permit application under Section 402 of the CWA, that are caused by events occurring within the scope of relevant operating or treatment systems.

D. Effluent Limitation. Any restriction imposed on quantities, rates, and concentrations of pollutants that are discharged from point sources into waters of the United States, the waters of the contiguous zone, or the ocean.

E. Fecal Coliform Bacteria. Those organisms associated with the intestines of warm-blooded animals that are commonly used to indicate the presence of fecal material and the potential presence of organisms capable of causing human disease.

F. Marine Sanitation Device. Any equipment for installation onboard a vessel that is designed to receive, retain, treat, or discharge sewage and any process to treat such sewage.

G. National Pollutant Discharge Elimination System (NPDES). The national program for issuing, modifying, revoking and reissuing, terminating, monitoring and enforcing permits, and imposing and enforcing pretreatment requirements, under Sections 307, 402, 318, and 405 of the CWA.

H. Navigable Waters. The waters of the United States, including the territorial seas.

I. Permit. An authorization, license, or equivalent control document that the EPA or an approved State issues to implement the requirements of 40 CFR 122-124. Permit includes an NPDES general permit (40 CFR 122.28). Permit does not include any permit that has not yet been the subject of final agency action, such as a “draft permit” or a “proposed permit.”

J. Pollutant. Dredged soil, solid waste, incinerator residue, filter backwash, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials (except those regulated under the Atomic Energy Act of 1954 as amended), heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharged into water. It does not mean:

(1) Sewage from vessels.

(2) Water, gas, or other material injected into a well to facilitate production of oil or gas, or water derived in association with oil and gas production and disposed of in a well. If the well is used either to facilitate production or for disposal purposes, approval authority is the State in which the well is located. The State must determine that the injection or disposal will not result in the degradation of ground or surface water resources.

K. Point Source. Any discernible, confined, and discrete conveyance, including but not limited to, any pipe, ditch, channel, tunnel, conduit, well, stock, concentrated animal feeding operation, landfill leachate collection system, vessel or other floating craft from which pollutants are or may be discharged. This term does not include return flows from irrigated agriculture or agricultural storm water runoff.

L. Publicly Owned Treatment Works (POTW). Any device or system owned by a State or municipality and used in the treatment (including recycling and reclamation) of municipal sewage or industrial wastes of a liquid nature. This definition includes sewers, pipes, or other conveyances only if they convey wastewater to a POTW providing treatment.

M. Reportable Quantity. A quantity that may be harmful as set forth in 40 CFR 117.3.

N. Toxic Pollutant. Any pollutant listed as toxic under Section 307(a)(1) or, in the case of sludge use for disposal practices, any pollutant identified in regulations implementing Section 405(d) of the CWA.

O. Vessel. Every description of watercraft or other artificial contrivance used, or capable of being used, as a means of transportation on water other than a public vessel.

P. Waters of the United States.

(1) All waters currently used, used in the past, or that may be susceptible to use in interstate or foreign commerce, including all waters which subject to the ebb and flow of the tide.

(2) All interstate waters, including interstate wetlands.

(3) All other waters such as intrastate lakes, rivers, streams (including intermittent streams), mudflats, sandflats, wetlands, sloughs, prairie potholes, wet meadows, playa lakes or natural ponds, the use, degradation, or destruction of which would or could affect interstate or foreign commerce including any such waters:

(a) That interstate or foreign travelers use or could use for recreational or other purposes.

(b) From which fish or shellfish are or could be taken and sold in interstate or foreign commerce.

(c) Which industries in interstate commerce use or could be use for industrial purposes.

(4) All impoundments of water otherwise defined as waters of the United States under this definition.

(5) Tributaries of waters identified in subparagraphs (1) through (4) above.

(6) The territorial sea.

(7) Wetlands adjacent to waters (other than waters that are themselves wetlands) identified in subparagraphs (1) through (6) above.

(8) Waste treatment systems, including treatment ponds or lagoons designed to meet the requirements of the CWA, are not waters of the United States.

Q. Wetlands. Those areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally includes swamps, marshes, bogs, and similar areas.

3.7 What is the objective of CWA? The stated objective of the CWA is to restore and maintain the chemical, physical and biological integrity of the Nation's waters. The CWA provides regulations for discharges into surface waters from all types of sources (municipal and industrial point sources, and nonpoint sources). To achieve the stated objective, the CWA establishes as national goals:

(1) Achievement of a level of water quality that provides for the protection and propagation of fish, shellfish, and wildlife and for recreation in and on the water.

(2) Elimination of the discharges of pollutants into the navigable waters.

(3) Prohibition of the discharge of toxic pollutants in toxic amounts.

(4) Construction of Publicly Owned Waste Treatment Works (POTW) with financial assistance.

(5) Establishment of waste treatment management plans within each State.

(6) Establishment of technology necessary to eliminate the discharge of pollutants into the navigable waters, waters of the contiguous zone, and the oceans.

(7) Development and implementation of programs for the control of nonpoint sources of pollution.

3.8 Who implements the CWA? The CWA is a Federal/State program that prohibits discharges of any pollutants by any person except in compliance with the Act's permit requirements, effluent limitations, and other enumerated provisions. The State is often delegated authority to administer NPDES permits for discharges in the State. Additionally, many States have sewage treatment plant operator licensing and certification programs. Local entities may also have enforceable wastewater discharge limitations which regulate discharges to a POTW.

A. The CWA and all State-adopted water quality control laws require the States to establish and maintain water quality standards. A water quality standard is a numerical

limit established for each parameter such as dissolved oxygen, pH, and turbidity, which is a suitable value for protecting the classified use of a particular water segment. A standard consists primarily of a numerical limit and may include a definition of how that limit is to be measured.

B. All point sources must treat their wastes to meet water quality standards in addition to applying technology-based effluent limitations. The water quality standards, in order to become effective for a particular point source, are translated into effluent limitations through permit conditions, which are issued to that point source.

3.9 What is the National Pollution Discharge Elimination System (NPDES)?

A. Permit Requirements. The NPDES is a system of requirements to obtain permits for the commencement or continuation of any discharge of pollutants to surface waters. Discharge of pollutants without a permit is prohibited. The permit program gives the issuing authority precise information concerning the discharger's activities and provides advice to the discharger as to what is permissible. The NPDES permit establishes specific levels of performance the discharger must maintain and it requires the discharger to report failures to meet those levels to the appropriate regulatory agency.

(1) The effectiveness of the permit program in assuring compliance with applicable effluent limitations, water quality standards, pretreatment standards and other requirements depends on the effectiveness of monitoring and data maintenance requirements included in permits pursuant to Section 308 of the CWA for owner or operator of any point source.

(2) States have the opportunity to administer their own monitoring programs and upon obtaining EPA's approval of an appropriate monitoring program, the State becomes the monitoring authority for all point sources within its jurisdiction.

(3) The enforcing authority has the right to enter the premises of the discharger at any reasonable time, inspect the records, take test samples, etc.

(4) All data obtained under Section 308 of the CWA is required to be open to the public except to protect trade secrets.

(5) Results of monitoring must be reported as governed by the terms of the permit to the issuing authority on forms provided by the authority.

(6) Any discharge above the maximum daily discharge limitation for any of the pollutants listed in the permit must be reported within 24 hours as specified in the permit.

(7) NPDES permit application requires extensive waste stream analysis and cataloging of chemicals in the waste stream and imposition of controls on the discharge of these chemicals. All analytical testing must be done in accordance with State and/or EPA approved procedures pursuant to 40 CFR 136.3.

(8) NPDES permits may be valid for terms up to 5 years and may be subject to revocation or modification based on a very minimal showing of cause. Under EPA rules, the complete permit application must be filed at least 180 days prior to existing permit's expiration date. Earlier filing is strongly recommended for affected Service facilities.

(9) If a Service facility is discharging stormwaters associated with an industrial or construction activity, it is required to apply for an individual permit, apply for a permit through group application, or seek coverage under a general permit pursuant to 40 CFR 122.26(c).

B. Discharge of Toxic Pollutants. The discharge of most toxic pollutants is regulated under the Best Available Technology (BAT) effluent limitations guidelines, new source performance standards, and pretreatment standards pursuant to Section 307(a) of the CWA.

3.10 What is the policy regarding oil spills?

A. Spill Prevention. The CWA requires any facility that has the capacity to store oil products in an aboveground tank greater than 660 gallons, has a total aboveground storage capacity greater than 1320 gallons, or has an underground storage capacity of more than 42,000 gallons to maintain and implement an SPCC plan.

(1) All SPCC plans must be in accordance with 40 CFR 112.7 and must be reviewed and certified by a Registered Professional Engineer.

(2) Keep a complete copy of the SPCC plan on site and review it at least once every 3 years. Amendments are required whenever a change occurs that affects the facility's potential for discharge or to include more effective prevention and control technology.

(3) A copy of the SPCC plan must be available at sites that are normally attended at least 8 hours/day where there is a potential for a discharge.

(4) All facility personnel involved with the management and handling of oil and hazardous substances must take part in periodic training in spill prevention and response.

(5) All bulk storage tanks (over 660 gallons) must be provided with a secondary means of containment for the entire contents of the largest single tank plus sufficient free board to allow for precipitation.

(6) Appropriate containment and/or diversionary structures, and cleanup equipment to prevent discharged petroleum products from reaching navigable water course must be readily available at the facility.

(7) Drainage of rainwater from diked areas must be controlled by a valve that is locked when not in active use or attended.

B. Spill Notification. The CWA requires that the discharge of oil or a Reportable Quantity (RQ) of a hazardous pollutant into or upon the navigable waters of the United States or adjoining shorelines or into or upon the waters of the contiguous zone or into areas that may affect natural resources belonging to or under the exclusive management authority of the United States be brought to the attention of the National Response Center (NRC) at 800-424-8802. The Service facility manager/project leader must notify the Regional Spill Coordinator, whenever feasible, prior to notification to the NRC. Severe penalties apply to those who discharge oil or hazardous pollutant quantities in excess of the RQ and fail to report them and who fail to take appropriate cleanup and remedial action in response to such spills.

3.11 What is the Dredge and Fill Permit Program?

A. Section 404. Section 404 of the CWA controls dredging activity and the disposal of dredged or fill material into navigable water by granting the Corps of Engineers (COE) the authority to designate disposal areas and issue permits to discharge dredged and fill material therein. Section 404 authority extends to all waters of the United States, including wetlands, and the COE has construed it to cover the emplacement of dredge or fill material for development purposes and the construction of structures. Also, Section 404 permits are subject to the National Environmental Policy Act (NEPA).

B. Permit Program. States have been authorized to establish permit programs for dredge and fill activities in non-navigable waters. States must comply with extensive requirements and must obtain EPA's approval of the program. A copy of each permit application and each proposed permit also must be sent to the EPA, COE, and the Service for review and comments.

3.12 What is the Marine Sanitation Device Standard?

The standard applies only to vessels that the United States owns and operates and on which a marine sanitation device has been installed.

A. Freshwater Sources. In freshwater lakes, freshwater reservoirs, or other freshwater impoundments, marine sanitation devices certified by the U.S. Coast Guard, installed on all vessels must be designed and operated to prevent the overboard discharge of sewage, treated or untreated, or any waste derived from sewage.

B. Other Waters. In all other waters, Coast Guard certified marine sanitation devices installed on all vessels must be designed and operated to either retain, dispose of, or discharge sewage. If the device has a discharge, the effluent must not have fecal coliform bacterial count of greater than 1,000 per 100 ml nor visible solids.

C. State Requirements. A State may completely prohibit the discharge from all vessels of any sewage, whether treated or not, into some or all of the waters within such State.